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June 21, 1994

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VIA HAND DELIVERY

William F. Caton
 Acting Secretary
 Federal Communication Commission
 1919 M Street, N.W., Room 222
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

Re: Broadband Personal Communications Services, PP Docket
 No. 93-253, Permissible Ex Parte Communication

Dear Mr. Caton:

Pursuant to § 1.1206 of the Commission's Rules, there is transmitted herewith written notice of a permissible ex parte presentation made this day by James Troup and Laura Montgomery, attorneys for Telephone Electronics Corporation (TEC) to William E. Kennard, Ralph Haller, Christopher J. Wright and Jonathan V. Cohen.

This meeting addressed the issues and concerns raised by TEC in its comments and reply comments, filed in the above-captioned docket. The attached written materials were disseminated during the meeting.

TEC is a small entrepreneurial company with its operations centered in rural areas of this country. During this meeting, we addressed our concerns that, while TEC's telephone companies are defined as small by all of the Commission's current regulations, the Commission may reach a decision on June 29th that disqualifies TEC from all of the small business bidding preferences for the broadband personal communications services (PCS) auctions. TEC is aware that other parties have proposed that eligibility for bidding on the entrepreneur blocks be limited to companies with annual gross revenues of less than \$100 million. These parties have also asked the Commission to limit the ability to pay for a winning bid in installments to companies with annual gross revenues of less than \$40 million.

We stated during this meeting that TEC has no objection to such a gross revenue standard, if as with the FCC's current rules,

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it applies to gross revenue from only regulated operations. However, a gross revenue standard that also includes gross revenue from non-regulated operations would preclude small telephone companies that are involved in the resale of interexchange services from participating in broadband PCS although most of the gross revenue from such resale is used to pay access charges to the Bell Operating Companies (BOCs).

This meeting also addressed the need to set aside broadband PCS Channel Blocks C and F upon which only small businesses, rural telephone companies and businesses owned by members of minority groups and women may bid. We indicated that bidding on these entrepreneur blocks should be limited to designated entities with less than \$40 million net worth. Furthermore, we stated during this meeting that passive investments by non-designated entities must be prohibited to prevent the BOCs and other large corporations from dominating the entrepreneur block auctions to the preclusion of small operators. In the absence of such restrictions on the auctions of the entrepreneur blocks, small businesses, such as TEC, will have no meaningful opportunity to acquire a broadband PCS license.

During this meeting, we discussed the need for an increase in the \$6 million net worth standard for defining a small business for purposes of being eligible to pay for winning bids in installments. TEC agreed with the Commission's observation in its Second Report and Order that the \$6 million net worth standard is not high enough for capital intensive services, such as broadband PCS. We stated that the threshold for defining a small business that is eligible to pay for its winning bid in installments should be adjusted upward to no more than a \$40 million net worth for all affiliates, combined. The \$40 million net worth standard is a reasonable extension of the \$6 million net worth standard already adopted for less capital intensive services.

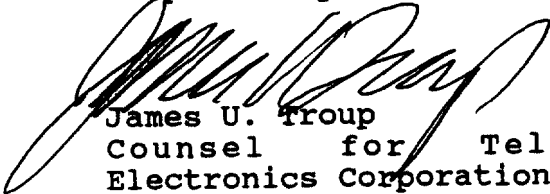
We asked the Commission to reject a gross revenue test because it would disqualify small businesses, such as TEC. Furthermore, a gross revenue test is not rationally related to its purpose because it would allow large companies formed for the purpose of bidding in the auctions that have no gross revenue to take advantage of the bidding preferences designed for only small businesses.

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We respectfully request that this letter and the attached enclosure be made a part of the record in this proceeding.

Respectfully submitted,



James U. Troup
Counsel for Telephone
Electronics Corporation

Enclosure

cc: James Garner
All Members of PCS Task Force



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PRESENTATION OF

TELEPHONE ELECTRONICS
CORPORATION

TO THE

PCS TASK FORCE

of the

FEDERAL COMMUNICATIONS
COMMISSION

in PP Docket No. 93-253

June 21, 1994

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Telephone Electronics Corporation (TEC) filed comments in this proceeding on November 10, 1993 and reply comments on November 30, 1993.

TEC is a holding company for six small independent local exchange carriers.

TEC is also involved in the resale of IXC services.

TEC is a closely held entrepreneurial company whose operations are centered in rural America.

80% to 90% of the gross revenue from these unregulated operations is used to pay BOC access charges.

TEC'S LOCAL EXCHANGE CARRIERS ARE SMALL TELEPHONE COMPANIES AS DEFINED BY SECTION 61.39(a) OF THE FCC'S RULES BECAUSE:

They serve 50,000 or fewer access lines in a given study area.

TEC'S LOCAL EXCHANGE CARRIERS ARE RURAL TELEPHONE COMPANIES BECAUSE:

They serve communities with 10,000 or fewer inhabitants.

(See 47 C.F.R. § 1.2110(b)(3).)

TEC'S LOCAL EXCHANGE CARRIERS ARE CLASS B TELEPHONE COMPANIES AS DEFINED BY SECTION 32.11(a)(2) OF THE FCC'S RULES BECAUSE:

They have annual revenues from regulated telecommunications operations of less than \$100 million.

TEC IS A SMALL BUSINESS ACCORDING TO THE SBA'S STANDARD INDUSTRIAL CLASSIFICATION BECAUSE:

TEC and all its affiliates combined have fewer than 1,500 employees. (See 13 C.F.R. § 121.601, No. 4813.)

ENTREPRENEUR BLOCKS

Section 309(j) of the Communications Act requires the dissemination of PCS licenses among a wide variety of:

- (a) small businesses,**
- (b) rural telephone companies, and**
- (c) businesses owned by members of minority groups and women**

The FCC cannot ensure participation by these designated entities without setting aside spectrum upon which they only may bid.

Blocks C and F should be designated the entrepreneur blocks.

Bidding on the entrepreneur blocks should be limited to designated entities with less than \$40 million net worth.

Alternatively, Class B telephone companies (see 47 C.F.R. § 32.11(a)(2)) with annual revenues from regulated telecommunications operations of less than \$100 million should be eligible to bid on the entrepreneur blocks.

A \$100 million gross revenue standard that includes gross revenue from low profit margin IXC resale would disqualify TEC's small telephone companies from bidding on the entrepreneur blocks.

PASSIVE INVESTMENT IN ENTREPRENEUR BLOCKS

The FCC should prohibit passive investments by non-designated entities from being used to bid on entrepreneur blocks.

This restriction will foster more participation by designated entities in broadband PCS.

Such passive investments would undermine a level playing field for bidding on the entrepreneur blocks by qualified designated entities.

Designated entities should be permitted to use passive investments from non-designated entities to construct and operate their entrepreneur block PCS systems.

INSTALLMENT PAYMENTS

Small telephone companies should be permitted, like other small businesses, to submit their winning bids in installment payments.

Paragraph 271 of the Second Report and Order in PP Docket No. 93-253 concluded that the \$6 million net worth standard for defining a small business "may not be high enough to encompass those entities that require the benefits, but also have the financial wherewithal to construct and operate the systems . . . for capital intensive services."

The threshold for defining a small business should be adjusted upward to no more than a \$40 million net worth for all affiliates, combined.

Alternatively, Class B telephone companies (see 47 C.F.R. § 32.11(a)(2)) with annual revenues from regulated telecommunications operations of less than \$100 million should be eligible to submit their winning bids in installment payments.

A \$100 million gross revenue standard that includes gross revenue from low profit margin IXC resale would disqualify TEC's small telephone companies from submitting their winning bids in installment payments.

**A NET WORTH STANDARD IS MORE APPROPRIATE
THAN A GROSS REVENUE TEST FOR A NEW SERVICE**

A gross revenue test excludes volume intensive small businesses with low profit margins.

While TEC's IXC resellers generate more than \$100 million in annual gross revenues, 80% to 90% of this is passed onto BOC's in the payment of access charges.

A gross revenue test is also over inclusive:

It classifies very large companies formed for the purpose of bidding in the auctions as small businesses because they have no gross revenue.

**THE ADVANTAGES OF A \$40 MILLION NET WORTH TEST
FOR DEFINING A SMALL BUSINESS**

The FCC can rely on SBA caselaw to apply a net worth standard.

The SBA's affiliation rules are more effectively applied when determining whether a small business satisfies a net worth test.

A \$40 million net worth standard is a reasonable extension of the \$6 million net worth standard already adopted for less capital intensive services.